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U.S. Supreme Court Decisions

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the collision, is the proximate cause of the injury where any negligence of the defendant had ceased to be operative. (Opinion fild Jan. 9, 1926. Petition for rehearing pending.)

Flath v. Nelson.

This is a controversy between the grandparents of a minor child. The child's parents were married when very young, and when the child was still an infant both parents died. The child had been under the care of the maternal grandparents from its infancy, and after the death of the child's mother there was found a memorandum in her writing expressing a wish that her parents might have the child. Her husband has predeceased her. Both plaintiff and defendant appear capable of providing for the child. HELD: Under Section 4462, the custody is awarded to the maternal grandparents. (Opinion filed Jan. 29, 1926. Decision final.)

Board of Medical Examiners v. Shortridge.

The board of medical examiners on March 2, 1925, revoked the license of the defendant to practice medicine and surgery in this state on the ground that he had been convicted of a crime involving moral turpitude and later had been convicted of murder in the second degree. The proceeding was instituted on an order to show cause based on a complaint. Record evidence of the offenses was before the board, an order of revocation was entered and an appeal taken to the district court. In that court defendant successively demanded a change of venue, a trial de novo and a jury trial. All of these were denied, and the order of revocation was affirmed. It is held that the proceedings before the board are administrative in character, that on appeal from the decision of the board the trial in district court is upon the record and testimony before the board, and that the judgment of revocation must be affirmed. (Opinion filed Jan. 29, 1926.)

U. S. SUPREME COURT DECISIONS

Unincorporated joint stock companies are subject to income tax provisions the same as corporations. The term "partnership" as used in the law refers only to ordinary partnerships.—Burk-Waggoner Oil Assn. vs. Hopkins, 46 Sup. Ct. Rep. 48.

The Supreme Court will follow state statutes and decisions which determine that a litigant who has elected not to appeal directly to the state supreme court, but instead has appealed to an intermediate court has waived his right to test questions involving the Federal Constitution.—Central Union Tel. Co. vs. Edwardsville, 46 Sup. Ct. Rep. 40.

Where a litigant asks leave of an intermediate court to appeal to the state supreme court, and leave is denied, and where he might have appealed to the supreme court as of right, the Supreme Court of the

U. S. will dismiss a writ of error to bring the case before it.—Southern Electric Co. vs. Beha, 46 Sup. Ct. Rep. 71.

A gas company, ordered by the Public Service Commission of the State of New York to extend its mains into five communities, may not challenge the validity of such order on the ground that as the present rate is unremunerative an extension of service will increase the company's losses. "The commission reasonably might assume that the company will take appropriate steps to save its property from confiscation." —Woodhaven Gas Light Co. vs. Public Service Commission, 46 Sup. Ct. Rep. 83.

WORKMEN'S COMPENSATION DECISIONS

Where disease is developed in the course of employment it must concurrently appear that its inception is assignable to a determinate or single act identified in space or time. A workman, whose death is claimed as a result of a cold, obtained by going from a hot room into a refrigerating plant, is not entitled to compensation as from accidental injury, since there was nothing catastrophic or extraordinary in his exposure.—Lerner vs. Rump Bros., 149 N. E. 334 (N. Y.).

A finding by the Industrial Board that claimant suffered a head disability as a result of brain concussion sustained in an accident is not supported by the evidence where the medical opinion to that effect is entirely speculative.—Carolan vs. Hoe & Co., 212 N. Y. Supp. 73 (N. Y.).

Where a deceased employe fell and injured his hand, and during his lifetime the Industrial Board considered solely that injury, the testimony of his widow and others as to deceased's declarations that at the time of injury he bit his tongue, the result of which was a cancer, it is held to be hearsay requiring corroboration, and the deceased's affidavit reciting the biting of the tongue is not adequate proof.—Schnable vs. Butterick Pub. Co., 212 N. Y. Supp. 11 (N. Y.).

An independent contractor is one who engages to perform a certain service for another, according to his own manner and method, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result or product of the work.—Southern Constr. Co. vs. Industrial Commission, 240 Pac. 613 (Okla.). The relation of employer and employe does not exist, although the principal reserved the right to terminate the work at any time, and notwithstanding the claimant was not given a specific piece of work to perform for a lump sum.—Wagoner vs. Davis Co., 340 Pac. 618 (Okla.).

Where a claimant is suffering from chronic glaucoma in both eyes prior to and at the time of an injury to the right eye, the burden is on him to prove the connection between the injury to his right eye and the acceleration of disease existent in the left eye, and recovery is precluded